



# House of Representatives

General Assembly

**File No. 404**

February Session, 2004

Substitute House Bill No. 5237

*House of Representatives, April 1, 2004*

The Committee on Environment reported through REP. WIDLITZ of the 98th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

**AN ACT IMPLEMENTING RECOMMENDATIONS OF THE WATER PLANNING COUNCIL REGARDING THE CONNECTICUT WATER DIVERSION POLICY ACT.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 22a-368 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective from passage*):

3 (a) Any person or municipality maintaining a diversion prior to or  
4 on July 1, 1982, shall register on or before July 1, 1983, with the  
5 commissioner on a form prescribed by him the location, capacity,  
6 frequency and rate of withdrawals or discharges of said diversion and  
7 a description of the water use and water system. Any such diversion  
8 which is not so registered may be subject to the permit requirements of  
9 sections 22a-365 to 22a-378, inclusive.

10 (b) Notwithstanding any other provision of the general statutes or  
11 any special act to the contrary, no person or municipality shall, after  
12 July 1, 1982, commence to divert water from the waters of the state

13 without first obtaining a permit for such diversion from the  
14 commissioner.

15 (c) No permit shall be transferred to another person or municipality  
16 without the written approval of the commissioner.

17 (d) (1) Any person or municipality claiming or maintaining a  
18 diversion registered in accordance with the provisions of this section  
19 shall pay to the commissioner an annual fee of up to ten thousand  
20 dollars for each diversion so registered. Not later than October 31,  
21 2004, the commissioner shall cause to be published in the Connecticut  
22 Law Journal a fee schedule for various classes of diversions that have  
23 been registered in accordance with the provisions of this section. In no  
24 event shall an annual fee be less than one thousand dollars or greater  
25 than ten thousand dollars. Such annual fee shall be due and payable on  
26 January thirty-first of each year. The fee required under this subsection  
27 shall be deposited into the Environmental Quality Fund established  
28 under section 22a-27g and shall be used by the commissioner to carry  
29 out the purposes of the Connecticut Water Diversion Policy Act,  
30 pursuant to sections 22a-265 to 22a-380, inclusive.

31 (2) Any person or municipality may avoid payment of the annual  
32 fee required pursuant to subdivision (1) of this subsection by filing a  
33 form with the commissioner that certifies the person or municipality  
34 claiming or maintaining such diversion no longer claims or maintains  
35 such diversion. The commissioner may require that such diversion be  
36 physically altered such that water can no longer be diverted from it.  
37 Such person or municipality shall also certify on such form that such  
38 person or municipality has never transferred such diversion to any  
39 other person, municipality or other entity.

40 (3) Not later than October 31, 2004, the commissioner shall create  
41 such form and send it by first class mail to all persons or municipalities  
42 known to the commissioner as claiming or maintaining a diversion  
43 pursuant to this section. In the event a person or municipality files  
44 such form after January thirty-first of any year, the commissioner may,  
45 in the commissioner's sole discretion, waive each annual fee, for a

46 single year, for each diversion identified on the form.

47 (4) In the event that a person or municipality fails to pay the annual  
48 fee required by this subsection by July first of each year, such person  
49 or municipality shall no longer divert water without first obtaining a  
50 permit for such diversion from the commissioner pursuant to sections  
51 22a-265 to 22a-380, inclusive, and any regulations adopted under  
52 sections 22a-265 to 22a-380, inclusive.

53 (e) In the event the commissioner issues a permit to divert waters of  
54 the state pursuant to sections 22a-265 to 22a-380, inclusive, and any  
55 regulations adopted under sections 22a-265 to 22a-380, inclusive, no  
56 person or municipality may claim or maintain such diversion as  
57 registered pursuant to this section.

58 Sec. 2. Section 22a-368a of the general statutes is repealed and the  
59 following is substituted in lieu thereof (*Effective from passage*):

60 (a) The Commissioner of Environmental Protection shall publish a  
61 dated notice of (1) the availability of a form for the reporting of  
62 operating data for diversions pursuant to this section, and (2) a  
63 deadline for submission of such form. Such form shall be developed by  
64 the Commissioner of Environmental Protection, in consultation with  
65 the Commissioners of Public Health and Agriculture and the  
66 chairperson of the Public Utilities Control Authority.

67 (b) Any person or municipality maintaining a diversion that was  
68 registered in accordance with the provisions of section 22a-368, as  
69 amended by this act, and which continues to be in use as of July 1,  
70 2001, shall report to the Commissioner of Environmental Protection  
71 current operating data for such diversion not later than six months  
72 after the publication of notice pursuant to subsection (a) of this section.  
73 Such data shall be provided on a form developed by the Commissioner  
74 of Environmental Protection, in consultation with the Commissioners  
75 of Public Health, Public Utility Control and Agriculture. Such data  
76 shall include monthly data for the calendar years 1997 to 2001,  
77 inclusive, (1) for the actual frequency and actual rate of water

78 withdrawals or discharges of such diversion if such diversion is  
79 metered, or (2) that estimates the withdrawals or discharges in the  
80 absence of a meter. A person or municipality maintaining a diversion  
81 exclusively for agricultural purposes may report estimated water use  
82 for the reporting period. The provisions of this subsection shall not  
83 apply to an owner or operator of an existing electric generating facility  
84 utilizing fossil fuel, provided the diversion is used to comply with  
85 state and federal environmental laws, and further provided such  
86 owner or operator reports to the Commissioner of Environmental  
87 Protection an estimate of future water use necessary to comply with  
88 state and federal environmental laws.

89 (c) Any person or municipality maintaining a diversion that was  
90 eligible for registration in accordance with section 22a-368, as amended  
91 by this act, but failed to so register, which diversion continues to be in  
92 use as of July 1, 2001, shall report to the commissioner the operating  
93 data for such diversion not later than six months after the publication  
94 of notice pursuant to subsection (a) of this section. Such data shall be  
95 provided on a form developed by the Commissioner of Environmental  
96 Protection, in consultation with the Commissioners of Public Health,  
97 Public Utility Control and Agriculture. Such data shall include (1) the  
98 location, capacity, frequency and rate of withdrawals or discharges of  
99 such diversion as of July 1, 1982, (2) a description of the water use and  
100 water system on or before July 1, 1982, including information to  
101 evidence its operation at that time, and (3) the monthly data for the  
102 calendar years 1997 to 2001, inclusive, (A) for the actual frequency and  
103 actual rate of water withdrawals or discharges of such diversion if  
104 such diversion is metered, or (B) that estimates the withdrawals or  
105 discharges in the absence of a meter. A person or municipality  
106 maintaining a diversion exclusively for agricultural purposes may  
107 report estimated water use for the reporting period in subdivision (3)  
108 of this subsection.

109 (d) Any person or municipality maintaining a diversion that was  
110 not eligible for registration in accordance with section 22a-368, as  
111 amended by this act, and is not currently authorized by permit issued

112 by the commissioner pursuant to said section, which diversion is in  
113 use as of July 1, 2001, shall report to the Commissioner of  
114 Environmental Protection operating data for the diversion not later  
115 than six months after the publication of notice pursuant to subsection  
116 (a) of this section. Such data shall be provided on a form developed by  
117 the Commissioner of Environmental Protection, in consultation with  
118 the Commissioners of Public Health, Public Utility Control and  
119 Agriculture. Such data shall include (1) information as to when the  
120 diversion was initiated, (2) a description of the water use and water  
121 system operation, and (3) the monthly data for the calendar years 1997  
122 to 2001, inclusive, (A) for the location, capacity, actual frequency and  
123 actual rate of water withdrawals or discharges of said diversion if such  
124 diversion is metered, or (B) that estimates the withdrawals or  
125 discharges in the absence of a meter. A person or municipality  
126 maintaining a diversion used exclusively for agricultural purposes  
127 may report estimated water use for the reporting period in subdivision  
128 (3) of this subsection.

129 (e) Information reported by a person or municipality for the  
130 purposes of subsection (c) or (d) of this section shall not be used by the  
131 Commissioner of Environmental Protection to order the payment of  
132 civil penalties pursuant to section 22a-6b and subsection (b) of section  
133 22a-376 provided the person or municipality has filed a permit  
134 application pursuant to section 22a-368, as amended by this act, on or  
135 before July 1, 2003. This subsection shall not apply to any information  
136 the commissioner can document independent of a submission  
137 pursuant to this section. Failure to report the information required in  
138 this section may result in civil penalties in accordance with section 22a-  
139 6b and subsection (b) of section 22a-376.

140 (f) Any person or municipality that was required to report  
141 operating data pursuant to this section, but failed to report such data  
142 by February 23, 2003, shall not divert water without obtaining a permit  
143 from the commissioner for such diversion pursuant to sections 22a-265  
144 to 22a-380, inclusive, and any regulations adopted under sections 22a-  
145 265 to 22a-380, inclusive.

146       (g) (1) Except as provided in subdivisions (2) and (3) of this  
147 subsection, any person or municipality maintaining a diversion that  
148 was registered in accordance with the provisions of section 22a-368, as  
149 amended by this act, shall install and maintain a totalizing flow meter  
150 to measure the total amount of water withdrawn from each such  
151 diversion and shall continuously operate and maintain such meter and  
152 shall maintain a daily log of water diverted, hours of operation and  
153 configuration of the diversion. In the event of a totalizing flow meter  
154 malfunction or breakage, each such person or municipality shall repair  
155 or replace the malfunctioning or broken meter not later than seventy-  
156 two hours after such malfunction or breakage. Each such meter shall  
157 be secured in a manner that ensures such person or municipality  
158 controls access to the meter.

159       (2) In the event that any person or municipality maintaining a  
160 diversion that was registered in accordance with the provisions of  
161 section 22a-368, as amended by this act, can demonstrate to the  
162 commissioner's satisfaction that metering of such diversion by use of a  
163 totalizing flow meter is not practicable, such person or municipality  
164 may request that the commissioner issue an alternative monitoring  
165 protocol for a class of diversions. If the commissioner issues such an  
166 alternative monitoring protocol for a class of diversions, any person or  
167 municipality maintaining such class of diversions shall comply with  
168 the requirements of such protocol.

169       (3) If any person or municipality maintaining a diversion that was  
170 registered in accordance with the provisions of section 22a-368, as  
171 amended by this act, demonstrates to the commissioner's satisfaction  
172 that metering of such diversion by use of a totalizing flow meter or by  
173 use of an alternative monitoring protocol for a class of diversions is not  
174 practicable, such person or municipality may request that the  
175 commissioner approve an alternative monitoring protocol for an  
176 individual diversion. If the commissioner approves an alternative  
177 monitoring protocol for an individual diversion, any person or  
178 municipality maintaining such individual diversion shall comply with  
179 the requirements of such protocol.

180       (4) If any person or municipality claiming or maintaining a  
181 diversion that was registered in accordance with the provisions of  
182 section 22a-368, as amended by this act, provides the commissioner a  
183 written request for an alternative monitoring protocol for an  
184 individual diversion by October 31, 2004, the commissioner may not  
185 find such person or municipality in violation of this section until sixty  
186 or more days after the commissioner approves or denies such  
187 alternative monitoring protocol for an individual diversion.

188       (5) In the event that any person or municipality claims an  
189 exemption from the obligation to obtain a permit under sections 22a-  
190 265 to 22a-380, inclusive, and any regulations adopted under sections  
191 22a-265 to 22a-380, inclusive, the commissioner may issue an order  
192 requiring that such person or municipality install and maintain a  
193 totalizing flow meter. Such order may also describe the type and  
194 frequency of metering, monitoring, record keeping, calibration and  
195 reporting requirements.

196       (h) Any person or municipality maintaining a diversion that was  
197 registered in accordance with the provisions of section 22a-368, as  
198 amended by this act, shall test and calibrate each totalizing flow meter  
199 maintained pursuant to subsection (g) of this section every three years  
200 or as set forth in an alternative monitoring protocol. Each such  
201 totalizing flow meter shall be calibrated for accuracy by a post-  
202 calibration test to the following percentages:

203       (1) Within five per cent accuracy for less than two hundred fifty  
204 thousand gallons per minute maximum rated capacity;

205       (2) Within three per cent accuracy for between two hundred fifty  
206 thousand and one million gallons per minute maximum rated  
207 capacity;

208       (3) Within one per cent accuracy for greater than one million gallons  
209 per minute maximum rated capacity.

210       (i) (1) Any person or municipality claiming or maintaining a

211 diversion that was registered in accordance with the provisions of  
 212 section 22a-368, as amended by this act, shall provide an annual report  
 213 to the Commissioner of Environmental Protection. Such annual report  
 214 shall be provided to the commissioner not later than January thirty-  
 215 first of each year. The annual report may be provided on forms  
 216 provided by the commissioner, but each annual report shall, at a  
 217 minimum, contain the following information: (A) The name and  
 218 address of the person or municipality claiming or maintaining the  
 219 diversion, (B) the name and number of each diversion as previously  
 220 identified by the commissioner, (C) the total amount of water diverted  
 221 during the prior calendar year, expressed in gallons per day for each  
 222 diversion, or expressed in another measure acceptable to the  
 223 commissioner, (D) a description of the method used to measure the  
 224 diversion, (E) the results of any post-calibration test performed, and (F)  
 225 the dates and duration of any meter breakage or malfunction.

226 (2) In the event that any person or municipality fails to file the  
 227 annual report required by subdivision (1) of this subsection by July  
 228 first of any year, such person or municipality shall no longer divert  
 229 water without first obtaining a permit for such diversion pursuant to  
 230 sections 22a-265 to 22a-380, inclusive, and any regulations adopted  
 231 under sections 22a-265 to 22a-380, inclusive. If an annual report does  
 232 not comply with the provisions of this subsection, the commissioner  
 233 may reject such annual report. The commissioner shall provide written  
 234 notification to any person or municipality filing the deficient annual  
 235 report, detailing the reasons for such rejection. Failure to provide an  
 236 acceptable annual report before thirty days after receipt of such written  
 237 notification from the commissioner may be considered by the  
 238 commissioner as failure to provide an annual report.

This act shall take effect as follows:	
Section 1	<i>from passage</i>
Sec. 2	<i>from passage</i>



***Statement of Legislative Commissioners:***

Subsection (d) of section 1 and subsection (g) of section 2 were reworded for clarity and internal consistency.

**ENV**      *Joint Favorable Subst.-LCO*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

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**OFA Fiscal Note****State Impact:**

Agency Affected	Fund-Effect	FY 05 \$	FY 06 \$
Department of Environmental Protection	Environmental Quality - Revenue/Cost	See Below	See Below

**Municipal Impact:**

Municipalities	Effect	FY 05 \$	FY 06 \$
Various Municipalities	STATE MANDATE - Cost	See Below	See Below

**Explanation**

The bill authorizes the Department of Environmental Protection (DEP) to set annual fees for registered diversions ranging from \$1,000 to \$10,000 each and provides reporting requirements for the diversions. Based on an estimated 1400 registered diversions, the revenue gain to the Environmental Quality Fund would be between \$1,400,000 and \$14,000,000 million to carry out the Connecticut Water Diversion Policy Act.

It is estimated that if ten environmental engineer/analysts were used to collect and review methodology and engineering studies, and assuming they could work on one diversion a week this process would take approximately three years. The fees would cover all costs.

Municipalities which would need to register a diversion and pay a fee would incur costs. The exact impact would vary from municipality to municipality, but there is a potential some of these costs would not currently be budgeted for.

**OLR Bill Analysis**

HB 5237

**AN ACT IMPLEMENTING RECOMMENDATIONS OF THE WATER PLANNING COUNCIL REGARDING THE CONNECTICUT WATER DIVERSION POLICY ACT****SUMMARY:**

This bill authorizes the Department of Environmental Protection (DEP) commissioner to set annual fees for registered water diversions. People or towns who maintain such diversions but fail to pay the fee or who fail to report operating data must obtain water diversion permits. They do not have to pay the fee if they can show they (1) no longer maintain the diversion and (2) have not transferred it to anyone else. People or towns maintaining a registered diversion must measure its water flow and report annually to the commissioner. Those who fail to file an annual report by July 1, or whose annual report the commissioner rejects, must obtain a permit.

EFFECTIVE DATE: Upon passage

**WATER DIVERSION REGISTRATION AND PERMITS**

By law, water diversions include withdrawals of more than 50,000 gallons from wells or surface water in any 24-hour period, and certain other activities. Those who maintained a water diversion before July 1, 1982 had to register with the DEP commissioner by July 1, 1983. There was no registration fee. Since July 1, 1982, any person or municipality maintaining such a diversion must get a DEP water diversion permit, the fee for which varies.

This bill requires the commissioner to adopt a fee schedule for registered diversions ranging from \$1,000 to \$10,000 each, due and payable by January 31 annually. He must, by October 31, 2004, publish in the *Connecticut Law Journal* a fee schedule for various registered diversion classes. He must deposit the fees he collects in the Environmental Quality Fund to carry out the purposes of the Connecticut Water Diversion Policy Act.

A person or municipality who fails to pay the annual fee by July 1 of

any year must obtain a permit. The bill prohibits any person or town from claiming as a registered diversion a diversion for which the commissioner has issued a permit.

By law, people or municipalities maintaining registered diversions in use as of July 1, 2001 must report operating data to the commissioner within six months of the date he notifies them of the availability of a reporting form. The bill bars anyone who failed to report such information by February 23, 2003 from continuing to divert water unless he obtains a permit.

### **ABANDONED DIVERSIONS**

People or municipalities may avoid paying the fee by filing a form with the commissioner certifying they no longer maintain the diversion and have not transferred it to someone else. The commissioner must create these forms and send them by first-class mail by October 31, 2004 to all people or municipalities he knows maintain diversions. He may (1) waive the annual fee in any year for people or municipalities who file such forms after January 31 of that year and (2) require the physical alteration of diversions abandoned to prevent their future use.

### **MEASURING WATER FLOW**

The bill requires anyone maintaining a registered diversion to (1) install and maintain a totalizing flow meter to measure the amount of water withdrawn from it, (2) continuously operate and maintain the meter, and (3) keep a daily log of water diverted, hours of operation, and configuration of the diversion. It requires diversion operators to repair a broken or malfunctioning flow meter within 72 hours and secure the meter to ensure they control access to it.

### ***Alternative Measurement Protocols***

If a person or town maintaining the diversion can satisfy the commissioner that such metering is not practicable, such person or town may ask the commissioner to issue an alternative monitoring protocol for a class of diversions. Compliance with such a protocol satisfies the metering requirements.

If a person or town maintaining the diversion can satisfy the

commissioner that neither metering nor a class-wide alternative monitoring protocol is practicable, he or it may ask the commissioner to approve an alternative monitoring protocol for an individual diversion. Compliance with such an individual protocol satisfies the bill's metering requirements.

The bill prohibits the commissioner from finding that someone who has requested an alternative monitoring protocol for an individual diversion by October 31, 2004 has violated the bill until at least 60 days after the commissioner has approved or denied the request.

It authorizes the commissioner to issue an order requiring anyone who claims to be exempt from the permit requirement to install and maintain a totalizing flow meter. He may specify in his order the type and frequency of metering, monitoring, record keeping, calibration, and reporting requirements.

### ***Calibration Standards***

Anyone maintaining a registered diversion must test and calibrate each flow meter apparently at least once every three years, or as an alternative monitoring protocol requires. Each meter must be calibrated to the following percentages: (1) within 5% accuracy, for less than 250,000 gallons per minute maximum-rated capacity; (2) within 3% accuracy, for between 250,000 and one million gallons per minute; and (3) within 1% accuracy, for more than one million gallons per minute.

### **REPORTING REQUIREMENTS**

The bill requires any person or town maintaining a registered diversion to report to the commissioner by January 31 annually. The report may be on a form the commissioner provides, and must contain, at least:

1. the name and address of the person or town claiming or maintaining the diversion;
2. the name and number of each diversion as identified by the commissioner;
3. the total amount of water diverted for each diversion during the prior calendar year, expressed either in gallons per day, or in another measure the commissioner finds acceptable;

4. a description of the method used to measure the diversion;
5. the results of any post-calibration test; and
6. the dates and duration of any meter breakage or malfunction.

Anyone maintaining a registered diversion who fails to file an annual report by July 1 of any year must obtain a permit to continue to do so. The commissioner may reject any report that does not comply with the bill. In such a case, he must notify the person or town in writing, detailing his reasons for rejection. He may consider failure to file an acceptable annual report within 30 days of such notification as failure to file a report.

## **BACKGROUND**

### ***Related Bills***

SB 365 implements the Program Review and Investigations Committee's recommendations to (1) improve the collection of state water resources data and coordinate and (2) fund water resource planning through an annual fee on registered water diversions. It requires the DEP commissioner to adopt new minimum stream flow regulations, applicable to all state river and stream systems, taking into consideration the needs and requirements of public health, natural wildlife and public recreation, water supply, and other factors. The committee reported a substitute bill on March 3.

## **COMMITTEE ACTION**

Environment Committee

Joint Favorable Report

Yea 20      Nay 7